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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,534	11/20/2003	Robert Farrer Gilmour	4504-1068	6887
466	7590	12/29/2004	EXAMINER	
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			ALI, SHUMAYA B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/716,534

Applicant(s)

GILMOUR, ROBERT FARRER

Examiner

Shumaya B. Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/20/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: detailed action.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claims 1, 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Hely US Patent 5,506,748.***

2. **As to claim 1, Hely discloses** a foot and ankle support comprising a boot element (see fig.6 reference object 11) having an upper part (see fig.3 reference object 17) configured to contain a lower part (see fig.3 reference object 14) of a user's leg and the user's ankle (see col.2 lines 3-7) and a lower part configured to contain at least part of the user's foot (see col.1 lines 65-68, col.2 lines 1-3) the boot element providing a front opening (see fig.1 user's foot coming through an opening) and a pair of side flaps (see fig.3 reference objects 16 and 17, col.2 lines 8-10) defining the opening, primary fastening means (see fig.3 laces 26) operable to draw the side flaps together and each side flap having at least one aperture positioned to form a pair of adjacent apertures when the side flaps are pulled together (see col.2 lines 14/18), and at least one first strap able to engage with one side flap and be passed through the or an aperture in the other side flap and returned to the first side flap for engagement therewith (see col.3 lines 62-68), and secondary fastening means (see fig.2 reference object 50,51,32,36, col.2 lines 19-32) to further secure the boot element (laces goes through the eyelets of one side of the flap to be drawn through the adjacent eyelet of the opposite flap and can be returned to the first side flap to engage the within).

3. **As to claim 3, Hely discloses** a foot and ankle support as claimed in claim 1, wherein a pair of apertures (see fig.3 eyelets 25) are provided on each side flap (see col.3 lines 60-63), one aperture being at or adjacent the upper part of the boot element and one aperture being at or adjacent the lower part of the boot element (eyelets are placed along the length of each of the flap, hence eyelets/apertures are disposed both at the upper and lower part of the boot element).

4. **As to claim 4, Hely discloses** a foot and ankle support as claimed in claim 1, wherein the inner and outer surfaces of each side flap have the pile thereon of a pile and hook-fastening device, the hooks being provided on the strap (see fig.2 reference objects 41 and 43, col.4 lines 57-59).

5. **As to claim 5, Hely discloses** a foot and ankle support as claimed in claim 1, wherein the secondary fastening means comprise two straps (see fig.2 reference objects 32 and 36) having a first end (see fig.2 reference objects 32 and 36, the first ends are fixed to the back of the boot like member 11) and a second free end (see fig.2 reference objects 34 and 38), the first ends being affixed or affixable to the upper part of the boot element (see col.2 lines 18-21) and each of said straps being affixed to extend forwardly and down and having a length to pass across the top of the foot, under the metatarsal region of the foot and diagonally back up to be fastened to the boot element (see col.2 lines 33-44, col.4, lines 25-33), part fastening means being provided on the boot element (see fig.2 reference object 40, fig.3 reference object 42 col.4 lines 53-57) and the straps (see fig.2 reference objects 41 and 43 col.4 lines 57-59).

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be

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patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claim 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hely US Patent***

***5,5067,486 in view of Miklaus et al. US Patent 5,209,722.***

7. **As to claim 2, Hely discloses** a foot and ankle support as claimed in claim 1, wherein the side flaps having inner and outer surfaces, **however does not disclose** the first strap and the inner and outer surfaces having part fastening means thereon to enable the strap to be secured to the inner surface of one side flap, passed through the aperture in that side flap, looped through the aperture in the other side flap and be secured on the outer surface of the first mentioned side flap.

8. **As to claim 2, Miklaus et al. teach** an orthopedic ankle and foot support brace comprising inner (see fig.1 reference object 50) and outer (see fig.1 reference object 30) surfaces of a medial/lateral strut where the first strap(s) (see fig. 1 reference objects 70 and 72) having part fastening means (Velcro attachment on the back of the straps) thereon to enable the strap to be secured to medial/lateral strut, passed through the aperture (see fig.1 reference objects 84,88) in the medial/lateral strut, looped through the aperture in the other side medial/lateral strut on the parallel side and be secured on the outer surface of the first mentioned medial/lateral side (see col.5 lines 34-59).

9. Hely's laces are considered an alternative means of securing the two flaps together. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the laces of Hely in view of Miklaus et al. in order to provide the ankle strap with fastening means thereon to enable the strap to be secured to the inner surface of one side flap, passed through the aperture in that side flap, looped through the aperture in the other side flap and be secured on the outer surface of the first

mentioned side flap for the purposes of securing and pulling the flaps together to further support the foot near the metatarsal region.

10. **As to claim 6, Hely does not disclose** a foot and ankle support as claimed in claim 1, wherein the first strap or straps can be positioned at a selected angle to the flap. As to claim 6, applicant is directed to clarify what the applicant meant by "at a selected angle". Examiner assumes by "selected angle" applicant means strap can be positioned at different locations, i.e. one at the upper and one at the lower part of the flap.

11. **As to claim 6, Miklaus et al. teach** an orthopedic ankle and foot support brace comprising first strap(s) (see fig. 1 reference objects 70 and 72) (positioned at a different location along the foot support brace) having part fastening means (Velcro attachment on the back of the straps) thereon to enable the strap to be secured to medial/lateral strut (see col.5 lines 34-59).

12. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the laces of Hely in view of Miklaus et al. in order to provide the ankle strap positioned at a selected angle to the flap for the purposes of securing the flap to the user's foot.

#### ***Specification***

13. The disclosure is objected to because of the following informalities: on page 2, last line applicant is directed to clarify what the applicant meant by "at a selected angle" for examination of claim 6. Appropriate correction is required.

#### ***Priority***

14. Applicant is reminded that in order for a patent issuing on the instant application to obtain the benefit of priority based on priority papers filed in parent Application No. 10/716,534 (foreign application

522707) under 35 U.S.C. 119(a)-(d) or (f), a claim for such foreign priority must be timely made in this application. To satisfy the requirement of 37 CFR 1.55(a)(2) for a certified copy of the foreign application, applicant may simply identify the application containing the certified copy.

### ***Conclusion***

15. The prior art of record and not relied upon is considered pertinent to applicant's disclosure: US 4729370 A, US 4878504 A, US 5067486 A, US 5209722 A, US 5217431 A, US 5317820 A, US 5330419 A, US 5795316 A, US 5827211 A, US 5899872 A, US 5971946 A, US 6117098 A, US 6394971 B1, and US 6663583 B1 disclose various ankle foot orthosis.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30 am-4: 30 pm.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-6088.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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12/27/2004

Shumaya B. Ali  
Examiner  
Art Unit 3743

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700